

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
5

6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY
8 TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE
9 ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT
10 STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR
11 PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.
12

13 At a stated term of the United States Court of
14 Appeals for the Second Circuit, held at the United States
15 Courthouse, Foley Square, in the City of New York, on the
16 4th day of August, two thousand and six.
17

18
19 PRESENT: HON. DENNIS JACOBS,
20 HON. ROSEMARY S. POOLER,
21 Circuit Judges,
22 HON. EDWARD R. KORMAN*,
23 District Chief Judge.
24

25 - - - - -X
26 UNITED STATES OF AMERICA,
27

28 APPELLEE,
29

30 -v.-

05-5283

31
32 KARON JOHNSON,
33

34 DEFENDANT-APPELLANT.
35

36 - - - - -X
37
38

*The Honorable Edward R. Korman, Chief Judge of the United States District Court for the Eastern District of New York, sitting by designation.

1 **APPEARING FOR APPELLANT:** WILLIAM BINDER (Frederick H.
2 Cohn, on the brief), Gould
3 Reimer Walsh Goffin Cohn LLP,
4 New York, New York.

5
6 **APPEARING FOR APPELLEE:** JESSICA A. MORDAS, Assistant
7 United States Attorney
8 (Michael J. Garcia, United
9 States Attorney for the
10 Southern District of New York;
11 Harry Sandick, Assistant
12 United States Attorney, on the
13 brief).
14

15 Appeal from the United States District Court for the
16 Southern District of New York (Chin, J.).
17

18 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,**
19 **ADJUDGED AND DECREED** that the judgment of the district
20 court be **AFFIRMED**.
21

22 Karon Johnson ("Johnson") appeals from the judgment
23 entered on September 30, 2005 in the United States
24 District Court for the Southern District of New York
25 (Chin, J.), pursuant to a jury verdict convicting him of
26 unlawful possession of a firearm after having been
27 convicted of a felony, in violation of 18 U.S.C. §
28 922(g)(1). Familiarity is assumed as to the facts, the
29 procedural context, and the specification of appellate
30 issues.

31 1. The district court did not abuse its discretion
32 in refusing to give a requested limiting instruction on
33 witness credibility before it read back testimony
34 requested by the jury during deliberations. The main
35 charge included a detailed (and sound) instruction on
36 assessing the credibility of witnesses, including the
37 need to evaluate demeanor and non-verbal language.
38 Before the readbacks, the district court reminded the
39 jury of those instructions and told the jury to try to
40 "picture back to what the witnesses were like on the
41 stand as they were testifying." The supplemental charge,
42 when read in conjunction with the main charge, was
43 sufficient to counter any risk that the jury would have
44 placed undue weight on the readback testimony. See
45 United States v. Gengo, 808 F.2d 1, 4 (2d Cir. 1986)

1 (explaining that the legal sufficiency of jury charges
2 must be assessed on the whole record); cf. United States
3 v. Rodgers, 109 F.3d 1138, 1145 (6th Cir. 1997) (holding
4 that, "if a district court ... chooses to re-read
5 testimony to a deliberating jury, the district court must
6 give an instruction cautioning the jury on the proper use
7 of that testimony).

8 2. Section 922(g)(1), which prohibits the
9 possession of a firearm by a convicted felon, is
10 constitutional on its face and as applied here. We have
11 repeatedly rejected constitutionality challenges to
12 Section 922(g)(1) so long as the government establishes a
13 nexus to interstate commerce. See, e.g., United States
14 v. Gaines, 295 F.3d 293, 302 (2d Cir. 2002); United
15 States v. Santiago, 238 F.3d 213, 216 (2d Cir. 2001);
16 United States v. Jones, 16 F.3d 487, 491 (2d Cir. 1994).
17 This nexus need only be minimal; proof that the firearm
18 previously moved in interstate commerce is sufficient.
19 See United States v. Sorrentino, 72 F.3d 294, 296 (2d
20 Cir. 1995). Here, the government made the requisite
21 showing: an expert witness in the identification and
22 origin of firearms testified that the revolver possessed
23 by Johnson in the Bronx was manufactured in Springfield,
24 Massachusetts.
25

26 For the foregoing reasons, the judgment of the
27 district court is **AFFIRMED**.

28 FOR THE COURT:
29 ROSEANN B. MACKECHNIE, CLERK
30 By:

31 _____
32 Lucille Carr, Deputy Clerk